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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/888,824

06/25/2001

Eric Perrier

5219 US

9749

81283

7590

06/07/2010

BASF Beauty Care Solutions France

100 Campus Drive

Florham Park, NJ 07932

EXAMINER

HANLEY, SUSAN MARIE

ART UNIT

PAPER NUMBER

1651

NOTIFICATION DATE

DELIVERY MODE

06/07/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 09/888,824	<b>Applicant(s)</b> PERRIER ET AL.	
	<b>Examiner</b> SUSAN HANLEY	<b>Art Unit</b> 1651	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 70,72-78,82-86,91,96 and 98-100 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 91 is/are allowed.
- 6) ☒ Claim(s) 70,72-78,82-86,91,96 and 98-100 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Claims 70, 72-78, 82-86, 91, 96 and 98-100 are under examination.

#### ***Status Identifiers and Current Claim Amendment***

It is noted that Applicant has submitted a claim amendment based on the claim set filed 10/11/2006. The petition for revival was in response to the Office action mailed on 9/21/2007 in which claims 70, 72-78, 82-86, 96 and 98-100 were rejected and claim 91 was allowed. Claims 101 and 102 were cancelled in the Notice of Allowance mailed 2/20/2007. Hence, the status identifiers for claims 101 and 102 should be "Cancelled". Claim 73 was amended by the Examiner's amendment. Any amendments to the claims should be based on the allowed claim set. Said Examiner's Amendment was approved by Applicant. Applicant is required to clarify the set of claims under examination in the next response.

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 70, 72, 76, 78, 82, 85, 86, 96 and 98-100 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Comai et al. (US 4,218,443; cited in the IDS filed 8/31/04) in view of Guegler et al. (US 2002/0052034), Nozaki et al. (1984), Taber's Medical Dictionary and Wang et al. (cited in the Office action of 4/1/06).

Applicant argues that in the present application inhibitors are "described in the scientific literature for being inhibitors which act by competition with the substrate of the enzyme" and that the claimed invention blocks competition and cites the portion of the independent claims that

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state "avoids or limits the blockage of the enzymatic activity". Applicant asserts that Guegler teaches that the "protein of the present invention are also useful in the competition binding assay". Applicant concludes that Guegler is unsuitable for the stated intended purpose and that the combination of Guegler with the other references is improper.

Applicant's argument has been considered but it is not persuasive. Claim 70 is directed to "a method for identifying a compound or extract for manufacturing a topical composition for inhibiting lipoprotein lipase (LPL) thereby limiting uptake of fatty acids by adipocytes". Claims 99 ad 100 recite "determining the capacity of inhibition of the release of substrate of non-esterified fatty acid resulting from the activity of the lipoprotein lipase". The specification at page 4 teaches that the invention make use of any substance that "in particular is capable of inhibiting the activity of lipoprotein lipase as a novel means of action for limiting the storage in the adipocytes" (lines 18-22). Thus, the invention is drawn to a method of determining inhibitors of LPL since inhibition of LPL will limit the uptake of fatty acids by the adipocytes which will prevent them to be stored again in the form of triacylglycerols (specification, page 4, lines 8-14). Figures 1-3 show the inhibition of LPL as a function of the concentration of liana extract, *Uncaria tomentosa* extract and St. John's wort. The portion of the specification cited by Applicant is an observation that inhibitors in the literature do not seem to be extremely potent inhibitors of LPL" and that they are described in the "scientific literature for being inhibitors which act by competition with the substrate of the enzyme". There is no disclosure in the specification that teaches that the claimed invention is directed to blocking the inhibition of LPL. That would be counter-intuitive to the stated purpose of the invention which is to limited fatty acid uptake by adipocytes. Inhibiting LPL prevents the formation of fatty acids which can be

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absorbed by adipocytes. Hence, Guegler is relevant to the claimed invention since he teaches proteins that inhibit the activity of LPL. The portion of the claims which Applicant refers to that the claimed invention “avoids or limits the blockage of the enzymatic activity” refers to the purpose of the fatty acid acceptor in the assay which is to prevent the blockage of the enzymatic activity of the lipoprotein lipase by released fatty acids.

Claims 70, 72, 76-78, 82, 85, 86, 96, and 98-100 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Comai et al. (US 4,218,443; cited in the IDS filed 8/31/04) in view of Guegler et al. (US 2002/0052034, Nozaki et al. (1984), Taber's Medical Dictionary and Wang et al., as applied to claims 70, 72, 76, 78, 82, 85, 86, 96 and 98-100, in further view of Vanio et al. (1982; “Vanio”).

Applicant reiterates the argument regarding Guegler and that the combination of references fails to overcome the deficiencies of Guegler.

As noted supra, the stated aim of the invention in the claims and the specification is to inhibit the activity of LPL thereby decreasing the amount of fatty acids in the body which in turns limits the amount of fatty acids that can be taken up by adipocytes. Hence, Guegler's disclosure of competitive inhibitors of LPL is relevant to the invention. Vanio was cited to discloses that LPL requires apoC-II colipase for maximal activity.

Claims 70, 72-78, 82-86, 96, and 98-100 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Comai et al. (US 4,218,443; cited in the IDS filed 8/31/04) in view of Guegler et al. (US 2002/0052034), Nozaki et al. (1984), Taber's Medical Dictionary, Wang et al., and

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Vanio et al. (1982), as applied to claims 70, 72, 76-78, 82, 85, 86, 96, and 98-100, in further view of Kobayashi (US 3,875,007).

Applicant reiterates the argument regarding Guegler and that the combination of references fails to overcome the deficiencies of Guegler.

As noted supra, the stated aim of the invention in the claims and the specification is to inhibit the activity of LPL thereby decreasing the amount of fatty acids in the body which in turns limits the amount of fatty acids that can be taken up by adipocytes. Hence, Guegler's disclosure of competitive inhibitors of LPL is relevant to the invention. Kobayashi was cited to disclose that the lipolytic activity of a substance designated as GA-56 was established, in part, by comparing the activity of known inhibitors of LPL on its activity.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Hanley whose telephone number is 571-272-2508. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Susan Hanley/  
Examiner, Art Unit 1651

/Irene Marx/  
Primary Examiner  
Art Unit 1651

**Search Notes (continued)**

Application/Control No.

09/888,824

Examiner

SUSAN HANLEY

Applicant(s)/Patent under  
Reexamination

PERRIER ET AL.

Art Unit

1651

**SEARCHED**

Class	Subclass	Date	Examiner
435	19,198	7/28/2007	SMH

**INTERFERENCE SEARCHED**

Class	Subclass	Date	Examiner

**SEARCH NOTES  
(INCLUDING SEARCH STRATEGY)**

	DATE	EXMR
WEST: USPAT, EPAB, JPAB, DWPI, PGPUBS, USOCR, see attached	7/28/2007	SMH
WEST: USPAT, EPAB, JPAB, DWPI, PGPUBS, USOCR, see attached	9/16/2007	SMH
WEST: updated	5/25/2010	SMH